IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

~~81-5243~~
82-5275

LEO E. EDWARDS,
Petitioner,

vs.

STATE OF MISSISSIPPI,
Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF MISSISSIPPI

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

I.

Whether, in this capital case, a prospective juror was properly excused for cause on her statement that she could not follow applicable law and court instruction where such might conceivably dictate capital punishment?

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80-5249

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BRIEF IN OPPOSITION

OPINION BELOW

The opinion of the Supreme Court of Mississippi is reported as Leo E. Edwards v. State of Mississippi, 413 So.2d 1007 (Miss. 1982). Rehearing was denied on May 26, 1982. A copy of the opinion affirming conviction and sentence is before this Court as an Appendix A to the Petition for Writ of Certiorari.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court by way of Petition for Writ of Certiorari through the authority of 28 U.S.C. 1257(3), and poses a single question for review.

STATEMENT OF THE CASE

Petitioner, Leo E. Edwards, was convicted on April 3, 1981, in the Circuit Court of Hinds County, Mississippi, of capital murder, a conviction which stemmed from his murder of Mr. Lindsey Don Dixon during commission of an armed robbery of the Jackson, Mississippi, convenience store in which Mr. Dixon was employed. Petitioner was tried during the March, 1981 court term pursuant to the bifurcated procedure mandated by the Mississippi Supreme Court in Jackson v. State, 337 So.2d 1242 (Miss. 1976) and Sections 99-19-101 to 107, Mississippi Code Annotated (Supp. 1981). At the conclusion of the guilt phase of the bifurcated trial, the jury, after proper instruction, deliberated and returned a verdict finding petitioner guilty of capital murder. Thereafter, the trial proceeded into the sentencing phase. After hearing additional evidence and receiving proper instructions from the trial judge, the jury retired to deliberate and eventually returned, in proper form, a sentence of death.

On automatic appeal to the Mississippi Supreme Court, both conviction and sentence were affirmed by a unanimous court on April 14, 1982, and an execution date of June 2, 1982 was decreed. Edwards v. State, 413 So.2d 1007 (Miss. 1982). Timely petition for rehearing was filed by petitioner's counsel and denied by the court on May 26, 1982. A stay of execution was entered by the Mississippi Supreme Court on May 28, 1982, pending disposition of petitioner's petition for writ of certiorari presently before this Court.

The facts as reflected in the transcript of the trial court proceedings establish that during the early morning hours of June 14, 1980, one Mikel White picked petitioner up at a home in northwest Jackson, Mississippi. The two men picked up petitioner's girlfriend and rode around for a while, eventually returning to Slayton Avenue. Petitioner caught White as he prepared to leave and asked to be driven to a convenience store on Hanging Moss Road,

stating that he was to get some money from a girlfriend who worked there. White agreed and the two proceeded east on Northside Drive. When they entered the intersection of Hanging Moss Road and Northside Drive, petitioner exited the car and instructed White to drive north on Hanging Moss and park and wait on a nearby side street. White did so, turning the car around so that it faced Hanging Moss Road. He then locked the doors and fell asleep. Shortly thereafter, he was awakened by Edwards, who got in the car carrying a brown bag and an automatic pistol. (The pistol was later confiscated and identified by White at trial.) He told White that he had shot someone and had initially lied to him because he did not want him to know all his business. White drove to the home at which petitioner was staying, let him out of the car, and left.

In the meantime, Miss Freddie Singleton, the fiancee of convenience store clerk Lindsey Don Dixon, had become suspicious and fearful for Dixon's safety. She had phoned him around 4:00 a.m. on June 14, 1980, while he was on duty at the Stop-N-Go Market on Hanging Moss Road, and as they spoke, was told to wait a minute while he waited on some customers. A few moments later she heard a gunshot and a loud noise, then silence. Dixon never returned to the phone and Miss Singleton called the police. The call was taken by Officer Norman Dorr, who proceeded to the store, arriving there around 4:30 a.m. He was met by other officers, and upon entering the store found the cash drawer in disarray and Dixon lying dead in a pool of blood in a back storage area. He had been shot once in the chest. A subsequent autopsy determined the cause of death to have been excessive internal bleeding as a result of the bullet wound. Closer investigation revealed money missing from the register.

Later in the morning of June 14, 1980, Mikel White heard a radio report that a store clerk had been slain on Hanging Moss Road the night before. He drove directly to the house where petitioner was staying and confronted him with the news. Petitioner stated that he "shot the sucker" because he didn't want him to identify him. He showed no remorse or concern.

During the early morning hours of June 15th, Officer David Williams responded to a charge that a woman was being threatened at gunpoint in a local rooming house. He proceeded to that location and found a man brandishing an automatic pistol. The pistol was confiscated but the suspect vanished into the crowd. The officer, however, clearly saw the man and identified him at trial as petitioner Leo E. Edwards. The gun was later turned over to authorities and determined by ballistics tests to be the weapon which killed Lindsey Dixon.

On June 18, 1980, around 9:00 a.m., petitioner and Mikel White were stopped by police in Senatobia, Mississipi, for a traffic violation. Petitioner gave a false name and appeared to be highly intoxicated. Both men were taken to the police station, where a standard check indicated they were wanted for armed robbery and murder. A search of the vehicle showed two pistols in the trunk.

At petitioner's subsequent trial, a prospective juror, Ms. Pamela Hibler, was excused for cause on her profession that she could not "follow the testimony and the instructions of the Court and return a verdict of guilty although that verdict could result in the death penalty. . ." due to her conscientious scruples against and religious objection to capital punishment. The pertinent voir dire resulting in her exclusion follows:

> BY THE COURT:
>
> I want you to listen closely to the questions that will be asked you in this regard and consider very carefully. Do any of you have any conscientious scruples against the infliction of the death penalty when the law authorizes it and in proper cases and where the testimony warrants it? Do each of you understand the question that I asked?
>
> (Jurors nodding heads)
>
> BY THE COURT:
>
> Do any of you have any conscientious scruples under those circumstances?
>
> (Jurors raising hands)

BY THE COURT:

Okay. If you will, we will just take them one at a time and, if you would, state your name first.

* * *

BY THE COURT:

I want you to listen to it closely again, especially all of those who raised your hands. Just listen closely to the question again. Do you have any conscientious scruples against the death penalty when the law authorizes it in proper cases and where the testimony warrants it? Now, do you understand?

* * *

BY THE COURT:

Thank you. And the next one is Pamela Hibler. Is that right?

BY MS. HIBLER:

Yes, sir.

BY THE COURT:

Okay.

BY MS. HIBLER:

I just don't think I could be a juror to decide on a person.

BY THE COURT:

That's what I was afraid of. I was afraid that you and Ms. Hopkins both might be misunderstanding my question. It's not a question of whether you could make the decision. It's a question of whether you have conscientious scruples about --

BY MS. HIBLER:

I have conscientious scruples and religious belief also.

BY THE COURT:

Thank you. Is there anyone else up here?

(Juror raising hand)

* * *

BY THE COURT:

Now, to each of you who raised your hand, I want you to listen to the next question. Even though you may have conscientious scruples against the infliction of the death penalty, I ask you whether or not you could follow the testimony and the instructions of the Court

and return a verdict of guilty although that verdict could result in the death penalty if you, being the judges of the weight and worth of the evidence, were convinced of the guilt of the defendant and the circumstances warranted such a verdict? Now, do you understand the question?

(No response)

BY THE COURT:

It's a rather detailed question and I want to make sure that each one of you understands the question. I think I'll repeat it to make sure that each one of you understand it. This is directed just to those that said they had conscientious scruples against the infliction of the death penalty. Could you follow the testimony and the instructions of the Court and return a verdict of guilty although that verdict could result in the death penalty if you, being the judges of the weight and worth of the evidence, were convinced of the guilt of the defendant and the circumstances warranted such a verdict? Now, I'll take each one of you individually.

* * *

BY THE COURT:

Ms. Hibler?

BY MS. HIBLER:

I couldn't.

(R. 123-131)

In later voir dire conducted by the defense, Mrs. Hibler was questioned as follows:

BY MR. STANFIELD:

I am sorry. I had it out of order. It's Mrs. Pamela Hibler, is it not?

BY MRS. HIBLER:

Yes.

BY MR. STANFIELD:

Now, I believe you stated that you had religious beliefs, didn't you?

BY MRS. HIBLER:

Yes, sir.

BY MR. STANFIELD:

And I believe you stated this morning, you said: "I don't think I could be a juror". Is that what I understood you to say?

BY MRS. HIBLER:

I didn't understand you.

BY MR. STANFIELD:

Did you say this morning to Mr. Peters: "I don't think I could be a juror"?

BY MS. HIBLER:

Yes.

BY MR. STANFIELD:

Could you, Mrs. Hibler, if you were stated as a juror in this case, would you do your best to set aside your personal feelings and, aider hearing all the evidence, that is, the sworn evidence that comes from the witness stand, and the instructions of law which His Honor will give to you at the conclusion of the case and on that, in an effort to follow your duty as a juror, would you fairly consider all of the penalties which the law has provided?

BY MRS. HIBLER:

Yes.

BY MR. STANFIELD:

And you say yes?

BY MRS. HIBLER:

Yes.

BY MR. STANFIELD:

All right. Thank you, Mrs. Hibler.

(R. 303-4)

REASONS FOR DENYING THE WRIT

No questions of substance are presented by petitioner's assertion that prospective juror Hibler was excluded for grounds impermissibly broader than inability to follow the law due to opposition to the death penalty. The opinion of the Mississippi Supreme Court, specifically that portion upholding the exclusion of Ms. Hibler, is not at variance with the applicable decisions and doctrines of this Court, thus, the issue here presented does not warrant judicial interpretation.

Summarized, petitioner's position appears to indicate that while he admits Ms. Hibler forcefully and unequivocally stated she could not follow the instructions of the court and the evidenced established if both tended to indicate the propriety of the death penalty, further voir dire by defense counsel rehabilitated her responses. Particularly, petitioner states that Ms. Hibler's answer of "yes" to the question "would you do your best to set aside your personal feelings . . . would fairly consider all of the penalties which the law has provided?" was starkly inconsistent with her earlier statement of opposition to the death penalty, and mandated further voir dire by the trial court judge. By petitioner's interpretation, failure to conduct further inquiry violated this Court's determination in Adams v. Texas, 448 U.S. 38, 100 S.Ct. 2521, 65 L.Ed.2d 581 (1980) that

> . . .[I]f prospective jurors are based from jury service because of their views about capital punishment on "any broader basis" than inability to follow the law or abide by their oaths, the death sentence cannot be carried out. Id. at 48.

We agree in theory with Adams but assert that an overall reading of the voir dire in this case reveals ample support for the Mississippi Supreme Court conclusion that "[H]aving categorically stated that she couldn't follow the testimony and instructions of the court," she was correctly excused. Edwards v. State, 413 So.2d 1007, 1009 (Miss. 1982) In reaching this decision, the state's high court necessarily determined that any rehabilitative questioning by defense counsel resulted only in Ms. Hibler's statement that "she would try to be a 'fair' juror", id., and did not qualify her or overcome her earlier disqualifying answers.

The Mississippi Supreme Court's decision on this question is in conformity with recent relevant pronouncement by the federal judiciary and does not in any manner offend the spirit of this Court's holding in Adams v. Texas, supra. To the contrary, the logic in Adams expressly recognizes that jurors may be called

from service where

> their attitude toward the death penalty would prevent them from making an impartial decision as to the defendant's guilt.

id. at 44; quoting from Witherspoon v. Illinois, 391 U.S. 510, 519 (1968).

Most recently, in Williams v. Maggio, 679 F.2d 381 (5th Cir. 1982), the former Fifth Circuit Court of Appeals crystallized somewhat the inherent wisdom in viewing death penalty exclusion of jurors from broad focus rather than narrowly seizing on or expecting talismanic professions of absolute opposition. Therein, faced with appellate challenge to the exclusion of three potential jurors in a capital murder case originating in Louisiana state court, the court upheld the exclusions, stating with reference to one of the three, the following:

> Petitioner charges that Ms. Brou's responses fall far short of demonstrating automatic opposition to the death penalty. He attributes the absence of Witherspoon talismanic responses on the record to the State's failure to propound hard questions about opposition to the death penalty. We disagree. If one examines the underscored portion of her statement, one clearly finds that she did state that she could not return a death sentence. When the prosecutor inquired again to assure that she could not consider this penalty, Ms. Brou responded that she did not think she could do it. When this response is viewed in conjunction with her previous statement of clear opposition to the death penalty, the record of automatic opposition to the death penalty is established.
>
> * * *
>
> According to petitioner's analysis, exclusion of a venireman is impermissible unless he states in response to all questions that he absolutely refuses to consider the death penalty. An equivalent response framed in any other reasonable manner is judged to demonstrate that the individual's position is not firm. We reject such a rigid, unthinking interpretation of Witherspoon. Form will not be placed over substance.

It is quite clear from the opinion in Williams that an overall reading of the voir dire is necessary in determining the correctness of an exclusion for cause on death penalty opposition grounds. Such a reading, when undertaken in the case at bar, reveals that

while Ms. Hibler professed she would "do her best" to put her personal feelings aside and consider all the penalties included in the Court's jury charge, this statement did not outweigh her previous statement that she absolutely could not impartially determine guilt where such a determination might lead to imposition of the death penalty.

This Court has provided lower tribunals with much guidance in this area by virtue of the reasoning lodged in Witherspoon and its progeny. Experience has taught that jurors will not and in practice, do not profess their opinions identically, therefore, lower courts must be accorded some leeway in interpreting and categorizing a juror's responses. To reiterate the wisdom found in Williams v. State, supra "form will not be placed over substance" — the obvious substance in the present case being proper exclusion of Ms. Hibler for inability to impartially determine guilt or innocence.

CONCLUSION

For the reasons stated above, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE

I, Amy D. Whitten, Special Assistant Attorney General for the State of Mississippi, do hereby certify that I have this day mailed, first class postage prepaid, a copy of the foregoing Brief In Opposition to Petition For Writ of Certiorari To The Supreme Court of Mississippi to Honorable Melvin L. Wulf, Clark Wulf & Levine, 113 University Place, New York, New York 10003.

This, the 17th day of September, A.D., 1982.

ASSISTANT ATTORNEY GENERAL

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